

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 3:15-CR-125
V.)	
)	(VARLAN / SHIRLEY)
FRANK BLAIR TOMB,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This case came before the Court on October 16, 2015, for a telephone conference on the Defendant's Motion to Continue Trial Setting and Modify Corresponding Deadlines in Order on Discovery and Scheduling [Doc. 7], filed on October 6, 2015. Assistant United States Attorney Cynthia Davidson appeared on behalf of the Government. Attorney Stephen Ross Johnson represented the Defendant, who was also present.

The Defendant's motion asks the Court to continue the November 17 trial date and all corresponding deadlines approximately sixty (60) days. The Defendant argues that counsel needs additional time to complete a review of discovery and his investigation of the case and to advise the Defendant with regard to filing pretrial motions and/or the execution of a plea agreement. Defense counsel also needs time to prepare any factual or legal defenses for trial. The motion states that the Government does not oppose the request. During the telephone conference, the parties confirmed these positions. Mr. Johnson stated that he had discussed the

need for a continuance with the Defendant, who did not object. Counsel agreed to a new trial date of January 12, 2016.

The Court finds the Defendant's motion [Doc. 7] for a trial continuance to be well taken. It finds that the ends of justice served by granting a continuance outweigh the interest of the Defendant and the public in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). Defense counsel seeks additional time to investigate the case, to conduct legal research, to litigate any necessary pretrial motions, and to prepare for trial. Based upon the representations of the Defendant, the Court finds that the failure to grant a continuance would deprive defense counsel of the reasonable time necessary to prepare effectively for a trial, despite his use of due diligence. See 18 U.S.C. § 3161(h)(7)(B)(iv). The Court finds that such preparation cannot be accomplished before the November 17 trial date or in less than two and one-half months.

The Defendant's motion [Doc. 7] to continue the trial is **GRANTED**, and the trial is reset to **January 12, 2016**. The Court finds that all the time between the filing of the motion to continue on **October 6, 2015**, and the new trial date of **January 12, 2016**, is fully excludable time under 18 U.S.C. § 3161(h)(1)(D) & -(7)(A)-(B). With regard to further scheduling, the Court set a new motion deadline for **December 7, 2015**. The deadline for concluding plea negotiations is extended to **December 11, 2015**. Responses to motions are due on or before **December 21, 2015**. This date is also the deadline for providing reciprocal discovery. The Court further instructs the parties that all motions *in limine* must be filed no later than **December 28, 2015**. Special requests for jury instructions shall be submitted to the District Court no later than **January 4, 2016**, and shall be supported by citations to authority pursuant to Local Rule 7.4.

Accordingly, it is **ORDERED**:

- (1) The Defendant's Motion to Continue Trial Setting and Modify Corresponding Deadlines in Order on Discovery and Scheduling [Doc. 7] is **GRANTED**;
- (2) The trial of this matter is reset to commence on **January 12, 2016**, at 9:00 a.m., before the Honorable Thomas A. Varlan, Chief United States District Court Judge;
- (3) All time between the filing of the Defendant's motion on **October 6, 2015**, and the new trial date of **January 12, 2016**, is fully excludable time for speedy trial purposes as set forth above;
- (4) The deadline for filing pretrial motions is extended to **December 7, 2015**;
- (5) The deadline for concluding plea negotiations is extended to **December 11, 2015**;
- (6) Responses to motions are due on or before **December 21, 2015**. This date is also the deadline for providing reciprocal discovery;
- (7) Motions *in limine* must be filed no later than **December 28, 2016**; and
- (8) Special requests for jury instructions with appropriate citations shall be submitted to the District Court by **January 4, 2016**.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge